

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
LAURA L. CHAPMAN, Cal. Bar No. 167249
3 SOFYA ASATRYAN, Cal. Bar No. 327482
Four Embarcadero Center, 17th Floor
4 San Francisco, California 94111-4109
Telephone: 415.434.9100
5 Facsimile: 415.434.3947
E mail lchapman@sheppardmullin.com

6 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
7 Including Professional Corporations
8 SOFYA ASATRYAN, Cal. Bar No. 327482
12275 El Camino Real, Suite 100
9 San Diego, CA 92130-4092
Telephone: 858.720.8900
10 Facsimile: 858.509.3691
E mail sasatryan@sheppardmullin.com

11 Attorneys for Defendant
12 Ecovacs Robotics, Inc.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 CROWN CELL INC.,
18 Plaintiff,
19 v.
20 EVOCACS ROBOTICS, INC.,
21 Defendant.

Case No. 3:21-CV-07890-SI

**REPLY BRIEF TO PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION TO STRIKE OR, IN THE
ALTERNATIVE, TO DISMISS
PLAINTIFF'S COMPLAINT**

Date: February 11, 2022
Time: 10:00 a.m.
Crtrm.: 1

The Hon. Susan Illston

1 On January 7, 2022, Defendant Ecovacs Robotics, Inc. (“Ecovacs”) filed a Motion
 2 to Strike or in the Alternative to Dismiss (“Motion”) Plaintiff Crown Cell, Inc.’s
 3 (“Plaintiff”) second claim for relief for Intentional Interference with Contractual
 4 Relationships. (Doc. 12). On January 21, 2022, Plaintiff filed an amended complaint,
 5 voluntarily dismissing the claim at issue. (Doc. 16) That same day, Plaintiff also filed a
 6 response to the motion to, stating that since it amended its complaint while this Motion
 7 was pending, Ecovacs’ Motion has become moot. (Doc. 17). **Plaintiff did not oppose the**
 8 **merits of the Motion.**

9 The fact that Ecovacs abandoned the defective claim and filed a First Amended
 10 Complaint while the Motion was pending does not divest this Court of discretion to rule on
 11 the motion in order to permit Ecovacs to file its motion for attorneys’ fees pursuant to
 12 Code of Civil Procedure section 425.16, subdivision (c). Fees should be awarded here
 13 because the very purpose of the anti-SLAPP statute is “to compensate a defendant for the
 14 expense of responding to a SLAPP suit. To this end, the provision is broadly construed so
 15 as to effectuate the legislative purpose of reimbursing the prevailing defendant for
 16 expenses incurred in extracting herself from a baseless lawsuit.” *Graham-Sult v. Clainos*,
 17 756 F.3d 724, 752 (9th Cir. 2014) (internal citations omitted).

18 “A defendant may be deemed a prevailing party entitled to attorneys’ fees, even if a
 19 plaintiff voluntarily dismisses the claims that were subject to an anti-SLAPP motion to
 20 strike.” See *Coltrain v. Shewalter*, 66 Cal. App. 4th 94, 107, 77 Cal. Rptr. 2d 600 (1998);
 21 *Clear Channel Outdoor, Inc. v. Lee*, 2009 U.S. Dist. LEXIS 2734, 2009 WL 57110, at *1-
 22 *2 (N.D. Cal.); *Pandora Jewelry, LLC v. Bello Paradiso, LLC*, 2009 U.S. Dist. LEXIS
 23 56265, 2009 WL 1953468, at *3-*4 (E.D. Cal.). *Plevin v. City & County of San Francisco*,
 24 2011 U.S. Dist. LEXIS 83285, *12-13, 2011 WL 3240536

25 Because Plaintiff has not opposed the merits of Ecovacs’ anti-SLAPP motion, and
 26 has amended its complaint while the hearing on the Motion is pending, this Court retains
 27 discretion to hear the merits of Ecovacs Motion’ for the sole purpose of determining
 28 whether it would be deemed the prevailing party entitled to attorneys fees’. Ecovacs

1 respectfully requests this Court to exercise this discretion. The Motion is clearly
2 meritorious as evidenced by the plain fact that Plaintiff dismissed the very claim for relief
3 that was the subject of the Motion. Defendant Ecovacs respectfully requests that the Court
4 issue an order granting the motion, which is unopposed, and permit Ecovacs to submit a
5 statement of its attorneys' fees for payment by Plaintiff.

6 Respectfully submitted,

7 Dated: January 28, 2022

8 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

9
10 By /s/ Laura L. Chapman

11 LAURA L. CHAPMAN
12 SOFYA ASATRYAN

13 Attorneys for Defendant
14 Ecovacs Robotics, Inc.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF TEXAS, COUNTY OF DALLAS

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Dallas, State of Texas. My business address is 2200 Ross Avenue, 20th Floor, Dallas, Texas 75201.

On January 28, 2022, I served true copies of the following document(s) described as **RESPONSE TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE OR, IN THE ALTERNATIVE, TO DISMISS PLAINTIFF'S COMPLAINT** on the interested parties in this action as follows:


William B. DeClercq, SBN 240538
TAYLOR ENGLISH DUMA LLP
445 S. Figueroa St., Suite 3100
Los Angeles, CA 90071
Tel: (626) 408-2150
wdeclercq@taylorenghish.com

Coby S. Nixon (pro hac vice)
TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle, Suite 200
Atlanta, GA 30339
Telephone: (770) 434-6868
Facsimile: (770) 434-7376
cnixon@taylorenghish.com

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address bjolivet@sheppardmullin.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on January 28, 2022, at Dallas, Texas..


Belinda J. Jolivet